

Appl. No. 09/920,080
Amdt. dated 3/19/2004
Reply to Office Action of October 2, 2003

PATENT

REMARKS/ARGUMENTS

This communication is filed in response to the Office Action dated October 2, 2003. Review and reconsideration of the application are respectfully requested in view of the foregoing amendments and the following remarks.

Status of Claims

The Examiner has confirmed claims 6, 13, 14, 19, 27 and 28 are withdrawn from further consideration as being drawn to a non-elected species. Applicant will prosecute these claims upon indication of allowable subject matter in a generic or linking claim.

Applicant further notes the Examiner has now withdrawn claim 25, as amended, from further consideration as being drawn to the non-elected species illustrated in Fig. 5. Applicant will prosecute the subject matter of claim 25 upon indication of allowable subject matter in a generic or linking claim.

Drawing Objections

The Examiner refused to approve the replacement drawing sheet submitted by Applicant on August 22, 2003, and received by the Examiner on August 25, 2003, because numeral 22 in Fig. 3b was not "replaced" with numeral 25. On the replacement sheet, Applicant drew a red line through the reference numeral 22 to indicate its proposed deletion, and added next to it in red the reference numeral 25 to indicate its proposed addition. Applicant followed the official PTO procedure required by 37 C.F.R. 1.121 and MPEP 608.02(p). In doing so, Applicant erroneously presumed the Examiner would approve the proposed change and Applicant would submit a corrected drawing sheet when he submitted formal drawings. Since the Examiner did not explain that she required a non-standard form of drawing correction, Applicant did not simply replace reference numeral 22 in its entirety with reference numeral 25. In any event, Applicant would have thought it would have been entirely clear to the Examiner from

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Applicant's replacement sheet that reference numeral 22 was to be "replaced" with reference numeral 25. However, now that Applicant understands the Examiner requires a specific non-standard form of drawing correction, Applicant submits herewith a replacement drawing sheet with the reference numeral 22 simply replaced in its entirety with reference numeral 25.

Applicant regrets the confusion and extra work required.

The Examiner also objected to the drawings on the basis that the original drawings do not show the membrane connected "over" the pole and spar(s), as recited in amended claim 12. The Examiner required Applicant to either amend the drawings to show this feature or remove it from the claims. Applicant has canceled Claim 12, rendering the Examiner's drawing objection moot.

Claim Rejections – 35 U.S.C. 112

The Examiner rejected claims 8 and 21 under 35 U.S.C. 112, first paragraph, because the Examiner believes the specification fails to describe that one end of the spar can "terminate in" the surface, as recited in claim 8, or a common plane, as recited in claim 21. The Examiner is referred to paragraph 27 of the specification starting at page 5, line 33, and Fig. 4b, which clearly describes and shows the structure of Fig. 1 in an "alternative" leaning position in which one end of the spar(s) are in "contact" with the common plane. In the same paragraph, the ends of the main pole are described as "terminating" in the common plane. Paragraph 18 of the specification, starting at page 3, line 19 describes that the "common plane" may be "the ground." Given that the specification is directed to one of ordinary skill in the art, *W.L. Gore & Assoc. v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Ci. 1983); *Wang Labs, Inc. v. Toshiba Corp.*, 993 F.2d 858 (Fed. Ci. 1993), one of ordinary skill in the art would clearly understand that "contact" and "terminate" convey the same meaning. Applicant is not required to use exactly the same words in the claims as are used in the specification in order to meet his obligations under 35 U.S.C. 112. In any event. Applicant has canceled claims 8 and 21 for other reasons so the Examiner's rejection is moot.

The Examiner also rejected claims 1, 3-5, 7-12, 15, 29, 30, 16-18, and 20-24 under 35 U.S.C. 112, second paragraph for indefiniteness. The Examiner believes the recitation of "said flexible frame" in claims 1, 16, 29, and 30 has insufficient antecedent basis. In claims 1, 29, and

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30, the antecedent basis "for said flexible frame" is provided by the preceding phrase "thereby forming a flexible frame structure." It is hard to believe that this causes any real indefiniteness under 35 U.S.C. 112, particularly to persons skilled in the art. Nevertheless, to satisfy the Examiner, Applicant has amended claims 1, 29, and 30 so that "said flexible frame" is now "said flexible frame structure." Applicant has canceled claim 16 for other reasons so the Examiner's rejection is moot as to claim 16.

The Examiner also objected to the phrase "a volume dependent on said spar" in claim 1 as indefinite for failing to explain how the space is dependent on the spar. Applicant has further amended claim 1 to more particularly specify and overcome the Examiner's rejection.

The Examiner also objected to the use of "in said surface" in claims 8 and 9 and "in said common plane" in claims 21 and 22. The phrases "in said surface" and "in said common plane" are clearly used and described with respect to the ends of the spars in at least paragraphs 19 and 27 of the specification, and are clearly shown in at least Figs. 1 and 4b. One skilled in the art and reading the claims in connection with the specification would clearly understand these phrases, which are *exactly* the same as used in the specification. Therefore, it is difficult to understand where any indefiniteness arises or how the claims might be amended to eliminate that indefiniteness, particularly since the claims use the *exact* phrasing used in the specification. In any event, Applicant has canceled claims 8, 9, 21, and 22 for other reasons so the Examiner's rejection is moot.

The Examiner also rejected claim 30 as indefinite because the phrase "membrane engages said spar" "appears" to be vague. Once again, it is difficult to see how the use of the word "engages" could possibly be indefinite, particularly to one of ordinary skill in the art. Paragraph 24 of the specification clearly states: "As illustrated in Figures 1 and 2, in one preferred arrangement, the membrane is *connected* to the spars" Paragraph 22 states: "A membrane 30 is preferably *attached* to the flexible frame structure in any suitable fashion, numerous means for *connecting* such membranes to poles and the like being known to those skilled in the art." At least one of the definitions of "engage" in Webster's Unabridged Dictionary of the English Language is "to attach or secure." It is thus clear that "engages" is not unclear either to persons skilled in the art or in normal English usage. Once again, however, and although Applicant is

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under no obligation to use in the claims the same exact terms used in the specification, Applicant has amended claim 30 to replace "engages" with an *exact* term used in the specification, which Applicant hopes will resolve the Examiner's problem.

Claim Rejections – 35 U.S.C. 102

The Examiner rejected claims 1, 3, 5, 7, 8, 10-12, and 30 as being anticipated by Spray '094. Applicant has cancelled claims 8, 10, and 12 for other reasons. The rejection is therefore moot as to those claims.

With respect to the remaining claims, Applicant has further amended claim 1 to highlight the patentable features of the invention, including the floating ends of the spars, the flexible connection between the spars and main pole, and the expanded volume of the sheltered space resulting from the increased radius of the spars relative to the main pole. In contrast, Spray '094 describes a structure in which both ends of the rods B and D cited to by the Examiner are rigidly connected at pts. 10, 11, and 19 in Fig. 3, and are not floating. Also, rods B and A, and rods D and A, are described as being "clamped: at their crossing points, rather than being flexibly connected. Further, all of the rods, A, B, C, and D have substantially the same degree of arch and therefore radius, so there is no expansion of the sheltered space. See, for example, column 4, lines 45-48, 53-60. Accordingly, Spray '094 does not anticipate or render obvious the claims as amended.

Claim Rejections – 35 U.S.C. 103

The Examiner rejected claims 1, 3-5, 7, 9-11, 15, 30, 16-18, 20, and 22-24 for obviousness in view of Gerig '649. Applicant has cancelled claims 9-10, 16-18, 20, and 22-24 for other reasons. The rejection as to these claims is therefore moot. With respect to the remaining claims, Applicant has amended independent claim 1 to further highlight the patentable features of the invention as described above.

What the Examiner refers to as "spars (10)" in Gerig '649, Gerig describes as "spacer elements." See Col. 6, lines 1-35. The "spacer elements 10" serve the function of maintaining a fixed space between parallel arched portions 2. See Col. 6, lines 1-35. In order to do so, and as shown in Figs. 3-6, the spacer elements are attached at their ends by butt straps 11 to the arched

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poles 2. See Col. 6, lines 1-35. To the extent spacer elements 10 cross intermediate arched poles, it is not at all clear in there is *any* connection between a spacer element and an intermediate pole. See descriptions at Col. 7, lines 3-22; col. 7, lines 44-56; Col. 8, lines 18 and Figs. 4-6. To the contrary, there is language in the cited sections of the specification that intimate the spacer elements are *only* connected at their ends to the *outer* arched poles of the several structures shown. Accordingly, Gerig '649 does not teach or even suggest flexibly connecting a plurality of flexible spars at spaced locations along an elongated flexible pole, spars with floating ends, or defining a sheltered space having a volume dependent on the radius of curvature of the spars.

The Examiner also rejected claims 1, 3-5, 7, 9-11, 15, 30, 16-18, 20, and 22-24 for obviousness in view of the combined teachings of Gerig '649 and Warner '638. Applicant has cancelled claims 9-10, 16-18, 20, and 22-24 for other reasons. The rejection as to these claims is therefore moot. With respect to the remaining claims, Applicant has amended independent claim 1 to further highlight the patentable features of the invention as described above. The Examiner indicates that Warner '638 provides a guy line. Claim 1 and its dependent claims easily distinguish over Gerig '649 for the reasons given above. For the same reasons given above, the combination of Gerig '649 and Warner '638 fail to disclose or even suggest the patentable features of the invention as now claimed.

CONCLUSION

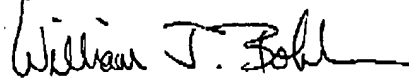
For all of the foregoing reasons, the application is now in proper form for allowance, and the remaining pending claims recite patentable subject matter over the prior art of record.

This has been a lengthy prosecution characterized by numerous rejections and objections of questionable merit. Applicant has gone out of his way to accommodate the Examiner's personal preferences even though in many instances not required either by the Rules of the PTO or law. If the Examiner has in mind to continue this manner of examination in the next response, Applicant respectfully requests a telephone interview with the Examiner *and* her Supervisor to discuss this case.

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